

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

UMB FINANCIAL CORPORATION,)	
a Missouri corporation,)	
)	
Plaintiff,)	
)	Case No. 4:24-cv-810
v.)	
)	
CAREPAYMENT TECHNOLOGIES, INC.)	Jury Trial Demand
an Oregon corporation,)	
)	
Serve Registered Agent:)	
National Registered Agents, Inc.)	
780 Commercial St. SE; Suite 100)	
Salem, OR 97301)	
Defendant.)	

COMPLAINT

UMB Financial Corporation (“UMBFC”) files this Complaint for trademark infringement and unfair competition against CarePayment Technologies, Inc. (“CarePayment”) and states as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction for trademark infringement and unfair competition arising under 28 U.S.C. §§ 1331 and 1338. Trademark infringement is a federal question under 15 U.S.C. § 1111 *et. seq.*, and state trademark infringement and unfair competition is a supplemental question arising out of the same facts and circumstances under 28 U.S.C. § 1367.

2. This Court has personal jurisdiction over defendants because of their substantial and continuous business contacts with Missouri and because CarePayment does business in Missouri.

3. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1400(a) because defendant conducts business within the judicial district and acts giving rise to this Complaint are believed to have occurred within this judicial district.

PARTIES

4. UMBFC is a financial holding company organized under the laws of the State of Missouri and headquartered in Kansas City, Missouri with its principal place of business also located in Kansas City, Missouri. UMBFC, through its wholly-owned subsidiaries such as UMB Bank, N.A. (“UMB Bank”), provides banking services and asset servicing to its customers in the United States and around the globe. UMB Bank has its principal office in Kansas City, Missouri with branch offices located in Arizona, Colorado, Illinois, Kansas, Missouri, Nebraska, Oklahoma, Texas and Utah.

5. CarePayment is a corporation organized under the laws of Oregon with its principal place of business located in Nashville, Tennessee.


FACTUAL ALLEGATIONS

UMBFC’s Senior Rights to and Use of the COUNT ON MORE. Mark

6. UMBFC, through its subsidiaries, offers a full complement of banking products and other financial services to individual, commercial, retail, government, and correspondent-bank customers. It offers commercial banking, which includes comprehensive deposit, lending and investment services, personal banking, which includes wealth management and financial planning services, and institutional banking, which includes asset servicing, corporate trust solutions, investment banking and health care financing.

7. In providing financial services to individuals and business customers, UMBFC uses trademarks, in part to help consumers distinguish between different brands and ensure that its customers know which financial services are those that are offered by UMBFC and can be trusted.

8. UMBFC owns a number of valid, protectable, and registered trademarks in connection with banking services including trademarks covered by registrations duly issued by the United States Patent and Trademark Office (the “USPTO”) and the Missouri Secretary of State for marks comprising or including COUNT ON MORE. including the following registrations:

Mark	Registration Number	Services	Exhibit
COUNT ON MORE.	3086601	banking services	1
	3626535	banking services	2
COUNT ON MORE.	State of Missouri S022276	banking services	3

The trademarks covered by the foregoing registrations may be referred to herein as the COUNT ON MORE. Marks.

9. UMB Bank is licensed to use trademarks of UMBFC including the COUNT ON MORE. Marks. UMBFC, through its wholly owned subsidiary and licensee UMB Bank, has continuously used the COUNT ON MORE. Marks in interstate commerce in the United States in

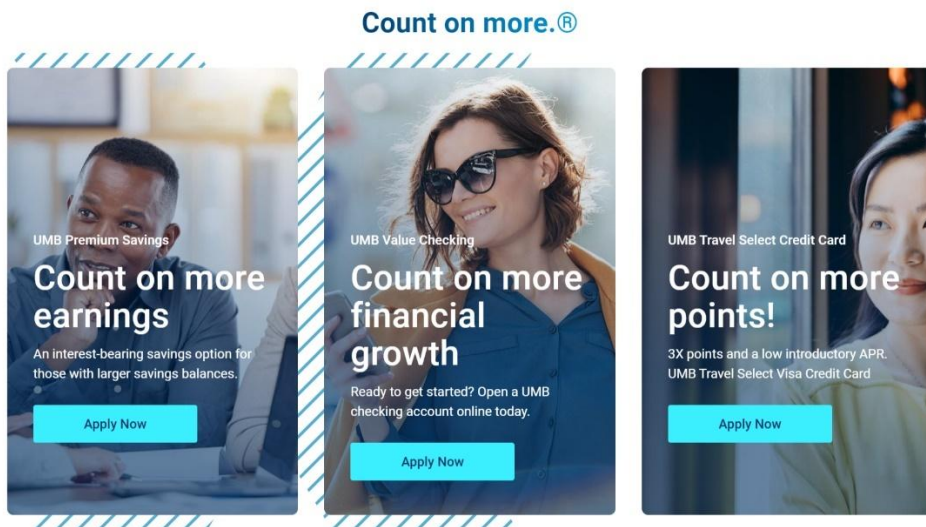
connection with banking services since May 17, 2005 and such use inures to the benefit of UMBFC.

10. Examples of use of the COUNT ON MORE. Marks in commerce appear on the website and other marketing of its financial services. For example, the COUNT ON MORE. mark appears

a. in videos playing on UMB Bank's ATMs:



b. on the website (<https://www.umb.com/>):



11. UMBFC also owns the www.countonmore.com domain name. Customers who type the domain name in any search engine are redirected to the website, www.umb.com. UMB Bank continues to use the COUNT ON MORE. Marks in commerce on its marketing, including without limitation in its brochures and ads promoting its services:



A mortgage solution tailored for your professional lifestyle.

You've worked hard to grow and succeed in your career, so we've created a simplified financing option to suit your needs. UMB offers a professional mortgage loan to help you purchase or refinance your home.

12. UMB Bank uses the COUNT ON MORE. Marks to offer and market, among other services, lending services to individuals and businesses. UMB Bank also provides and

markets lines of credit, health savings accounts, and credit card services to individuals and businesses including health care providers, hospitals, health care professionals, and patients.

CarePayment's Use of an Identical COUNT ON MORE. Mark

13. CarePayment provides patients and health care providers with financing for health care costs. Upon information and belief, CarePayment enters into agreements with health care providers to provide health care financing to patients who need assistance in paying the bills charged by the health care providers.

14. CarePayment engages with and provides its services to health care providers and patients of the health care providers across the country, including in Missouri. CarePayment's website lists that it does business with North Kansas City Hospital and Excelsior Springs Hospital, both of which are located in the Kansas City metropolitan area; as well as with three other locations in Missouri.

15. The CarePayment program was established in 2004 to provide health care financing services to health care providers and patients.

16. The CarePayment program was offered through WebBank, a Utah industrial bank. WebBank is a national issuer of consumer and small business credit products; it engages in a full range of banking activities.

17. CarePayment accounts are now administered by Republic Bank & Trust Company. The bank provides mortgage banking services and financial products to customers and has a loan production office in St. Louis, Missouri.

18. At least in 2005, CarePayment issued a "co-branded affinity card" in connection with its health care financing. The card has also been referred to as a "hospital-branded finance

card”. Upon information and belief, CarePayment now issues a digital card rather than a physical card.

19. The card is essentially a line of credit in the amount of some or all of the balance that the patient owes to the health care provider.

20. Whether a card is still used or not, an account is opened for a patient who chooses to use the service. The patient makes monthly payments to CarePayment until he or she pays off the amount the patient owes the health care provider. If the patient is late or misses a payment, CarePayment can issue a fee for the missed or late payment. Either the patient or CarePayment can decide to close the account – in which case if there is still a balance owed, the remaining debt is returned to the health care provider.

21. CarePayment had been using the phrase “A Better Idea for Healthcare” on its website in connection with providing its healthcare financing at least until February 5, 2022:

A Better Idea for Healthcare

We bridge the affordability gap between healthcare providers and their patients with our 0.00% APR patient financing.

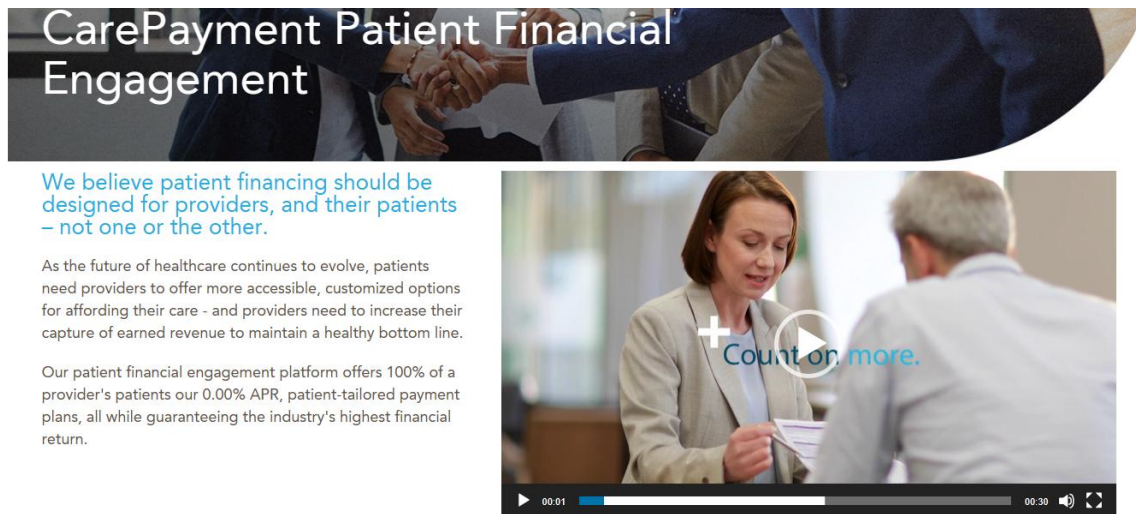
22. Upon information and belief, around March 30, 2022, CarePayment ceased use of “A Better Idea for Healthcare” and began using the mark COUNT ON MORE. on its website in connection with financial services:

Count On More

We bridge the affordability gap between healthcare providers and their patients with our 0.00% APR patient financing.

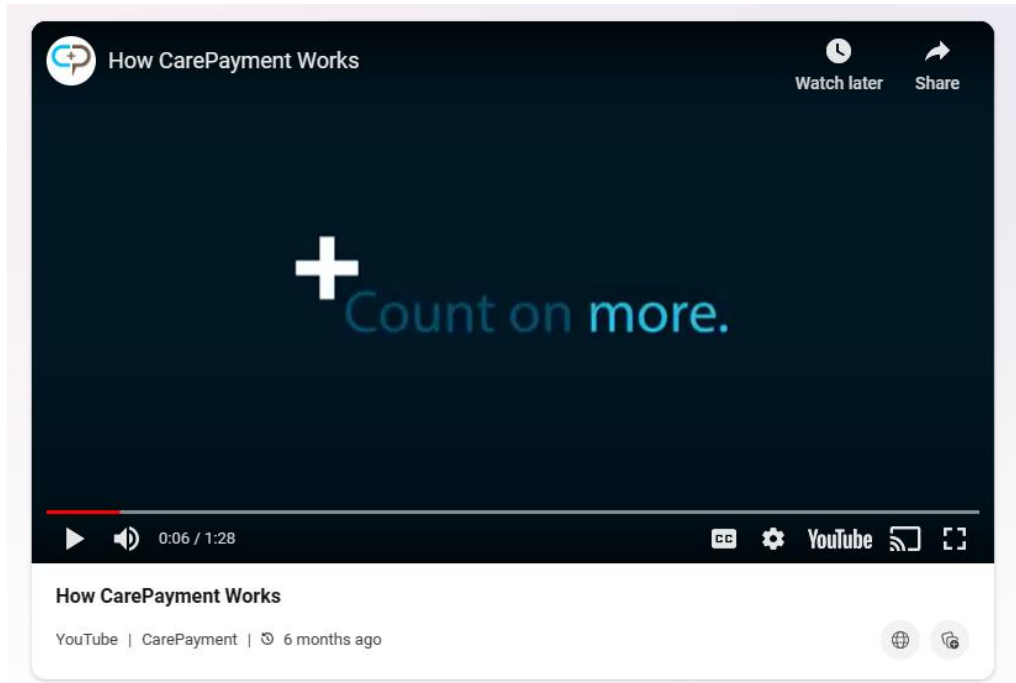
23. CarePayment uses the COUNT ON MORE. mark in association with its lending-type services offered to both patients and health care providers on its website and in informational and marketing materials, social media posts, and other media. Examples of use of COUNT ON MORE. by CarePayment include:

- a. On its website: <https://www.carepayment.com/?s=count+on+more>



b. On its YouTube channel:

<https://www.youtube.com/watch?v=FEzWRXCM4s0>



24. CarePayment adopted and has used the mark COUNT ON MORE. for its health care financing services despite UMBFC's prior use and registration of the identical mark for its banking services for many years. CarePayment adopted and has used the COUNT ON MORE. mark without authorization or permission from UMBFC.

25. UMBFC sent CarePayment a letter dated May 14, 2024, requesting that CarePayment cease and desist any further use of the COUNT ON MORE. mark. CarePayment acknowledged receipt of the letter, but continues to use the COUNT ON MORE. mark.

COUNT I
Federal Trademark Infringement
(15 U.S.C. § 1114)

26. UMBFC incorporates by reference the foregoing allegations as if fully set forth herein.

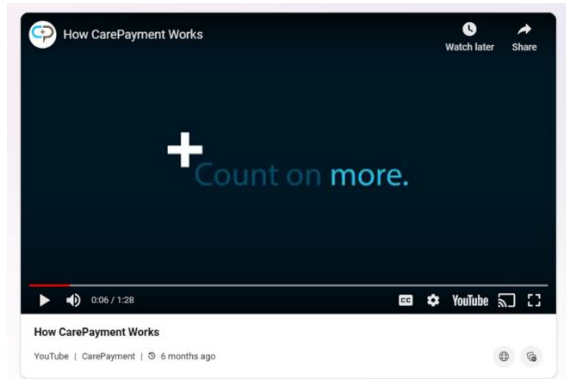
27. UMBFC is the owner of the COUNT ON MORE. Marks for financial services based upon use of the marks since at least 2005 and the COUNT ON MORE. Marks are registered with the USPTO in association with banking services. The federal registrations are incontestable.

28. CarePayment uses a mark that is identical to UMB's registered mark, COUNT ON MORE.

UMBFC's Mark: www.umb.com



CarePayment's Mark:



CarePayment's use even includes the period at the end of the COUNT ON MORE. mark.

29. CarePayment's unauthorized use of the mark COUNT ON MORE. is likely to cause confusion, mistake or deception as to the source of CarePayment's services or whether CarePayment's services are sponsored or approved by UMBFC. In view of both parties' use of COUNT ON MORE. for their respective financial services, the public is likely to believe that

CarePayment's services originate with UMBFC, are licensed by UMBFC, or are sponsored by, connected with, endorsed by, or related to UMBFC.

30. CarePayment's unauthorized use of the COUNT ON MORE. mark constitutes a commercial use in interstate commerce.

31. CarePayment's acts constitute infringement of UMBFC's rights in the COUNT ON MORE. Marks in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

32. CarePayment used COUNT ON MORE. without license or permission from UMBFC.

33. CarePayment's acts of trademark infringement have been committed with intent or reckless disregard to cause confusion, mistake, or deception, and in violation of 15 U.S.C. § 1114.

34. As a direct and proximate result of CarePayment's acts, UMBFC has suffered and continues to suffer substantial damages and irreparable injury, which damages and injury cannot be accurately computed at this time.

35. CarePayment's acts will continue to cause irreparable injury to UMBFC unless enjoined. Accordingly, in addition to other relief sought, UMBFC is entitled to injunctive and monetary relief.

COUNT II
FEDERAL UNFAIR COMPETITION AND FALSE DESIGNATION OF ORIGIN
(15 U.S.C. § 1125)

36. UMBFC incorporates by reference the foregoing allegations as if fully set forth herein.

37. UMBFC is the owner of the COUNT ON MORE. Marks and common law rights in the COUNT ON MORE. mark for financial services through use of the mark in commerce since at least 2005.

38. CarePayment's use of COUNT ON MORE. for its financial services is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of CarePayment with UMBFC, or as to the origin, sponsorship or approval of CarePayment's services, or commercial activities and the services.

39. CarePayment's unauthorized use of COUNT ON MORE. constitutes commercial use in interstate commerce.

40. CarePayment used COUNT ON MORE. without license or permission from UMBFC.

41. CarePayment's acts constitute unfair competition, false designation of origin, palming off, and false description or representation in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

42. As a result of CarePayment's unlawful acts, UMBFC has suffered and continues to suffer, substantial damages and irreparable injury, which damages and injury cannot be accurately computed at this time. CarePayment's acts will continue to cause irreparable injury to UMBFC unless enjoined. Accordingly, in addition to other relief sought, UMBFC is entitled to injunctive and monetary relief.

COUNT III
UNFAIR COMPETITION UNDER MISSOURI COMMON LAW

43. UMBFC incorporates by reference the foregoing allegations as if fully set forth herein.

44. CarePayment has used the mark COUNT ON MORE. with knowledge of UMBFC's prior rights in UMBFC's COUNT ON MORE. Marks and of UMBFC's provision of financial services. UMBFC also owns common law rights to the mark COUNT ON MORE. CarePayment's use of the mark COUNT ON MORE. is likely to deceive, mislead, or cause confusion and mistake among the public as to the nature and origin of CarePayment's services in violation of UMBFC's rights under the common law of the State of Missouri.

45. Upon information and belief, CarePayment is on notice of UMBFC's exclusive rights in the mark COUNT ON MORE. mark. By using the mark COUNT ON MORE. without authorization from UMBFC, CarePayment has been unjustly enriched and UMBFC has been damaged.

46. The aforesaid conduct of CarePayment constitutes unfair competition under the common law of the State of Missouri.

47. CarePayment's conduct has caused and is causing immediate and irreparable injury to UMBFC and will continue to damage UMBFC and to deceive the public unless enjoined by this Court. UMBFC has no adequate remedy at law. CarePayment's continued use of the mark is willful and constitutes wanton disregard of the rights of UMBFC.

COUNT IV
MISSOURI COMMON LAW TRADEMARK INFRINGEMENT

48. UMBFC incorporates by reference the foregoing allegations as if fully set forth herein.

49. UMBFC owns all right, title and interest in the trademark COUNT ON MORE. in association with financial services including banking services.

50. CarePayment has used and continues to use COUNT ON MORE. with knowledge of UMBFC's prior rights in the mark COUNT ON MORE. in association with the provision of financial services thereunder. CarePayment's use of the mark COUNT ON MORE. is likely to cause confusion and mistake among the public as to the nature and origin of CarePayment's services in violation of UMBFC's rights under the common law of the State of Missouri.

51. CarePayment is on notice of UMBFC's exclusive rights in the mark COUNT ON MORE. By using the mark COUNT ON MORE. without authorization, CarePayment has profited and UMBFC has been damaged.

52. The aforesaid conduct of CarePayment constitutes trademark infringement under the common law of the State of Missouri.

53. CarePayment's conduct has caused and is causing immediate and irreparable injury to UMBFC and will continue to damage UMBFC and to deceive the public unless enjoined by this Court. UMBFC has no adequate remedy at law. CarePayment's continued use of the mark is willful and constitutes wanton disregard of the rights of UMB.

COUNT V
MISSOURI TRADEMARK INFRINGEMENT OF REGISTERED MARK

54. UMBFC incorporates by reference the foregoing allegations as if fully set forth herein.

55. UMBFC owns all right, title, and interest in the COUNT ON MORE. mark registered with the State of Missouri as Registration Number S022276 (the "Missouri COUNT ON MORE. Registration").

56. CarePayment has used and continues to use the mark COUNT ON MORE. for financial services in Missouri. CarePayment's use of the mark COUNT ON MORE. is likely to

cause confusion and mistake among the public as to the nature and origin of CarePayment's services in violation of UMBFC's rights under Missouri law including under § 417.056 of the Missouri Revised Statutes.

57. By using the Missouri COUNT ON MORE. mark without authorization from UMBFC, CarePayment has profited and UMBFC has been damaged.

58. The aforesaid conduct of CarePayment constitutes trademark infringement under § 417.056.

59. CarePayment's conduct has caused and is causing immediate and irreparable injury to UMBFC and will continue to damage UMBFC and to deceive the public unless enjoined by this Court. UMBFC has no adequate remedy at law.

COUNT VI
VIOLATION OF MISSOURI ANTI-DILUTION STATUTE

60. UMBFC incorporates by reference the foregoing allegations as if fully set forth herein.

61. UMBFC owns all right, title and interest in the mark COUNT ON MORE. for banking services in Missouri, including the Missouri COUNT ON MORE. Registration and the common law marks.

62. UMBFC's COUNT ON MORE. Marks in Missouri are distinctive.

63. CarePayment has used and continues to use the mark COUNT ON MORE. in Missouri. CarePayment's use of the COUNT ON MORE. in Missouri is likely to cause injury to UMBFC's business reputation or dilution of UMBFC's rights in the COUNT ON MORE. mark in Missouri.

64. CarePayment's use of the mark COUNT ON MORE. mark and has created a likelihood of dilution of the distinctive quality of UMBFC's mark COUNT ON MORE.

65. CarePayment's conduct constitutes a violation of the Missouri Anti-Dilution Statute and its continuing use of a mark similar to or identical to the UMBFC mark has or will inexorably have an adverse effect upon the value of the Missouri Registered COUNT ON MORE. mark and its common law mark.

66. UMBFC has been damaged and will continue to be damaged by CarePayment's conduct in an amount to be determined at trial.

67. CarePayment's conduct has caused and is causing immediate and irreparable injury to UMBFC and will continue to damage UMBFC and to deceive the public unless enjoined by this Court. UMBFC has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, UMBFC prays that this Court grant it the following relief:

1. That the Court enter judgment in its favor and against CarePayment under each of the Counts set forth above in the Complaint;
2. That CarePayment be ordered, pursuant to 15 U.S.C. § 1118, to cease all use of the mark COUNT ON MORE. or any mark confusingly similar to COUNT ON MORE. in any form including in printed or electronic;
3. That CarePayment be ordered to pay all statutory damages in the maximum amount permitted under the Lanham Act;

4. That CarePayment be ordered to account for and pay over to UMBFC all damages sustained by UMBFC and all profits obtained by CarePayment as a result of its infringement and unfair competition;

5. That any award of damages and/or profits awarded UMBFC be increased as appropriate pursuant to 15 U.S.C. § 1117(a);

6. That UMBFC be awarded its reasonable attorneys' fees, costs, expenses, and interest pursuant to 15 U.S.C. § 1117(a) and other applicable law; and

7. That UMBFC be awarded such other relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby requests trial by jury on all issues so triable.

DESIGNATION OF PLACE OF TRIAL

Plaintiff hereby designates Kansas City, Missouri as the place of trial.

By: /s/ David L. Rein Jr.
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